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266 NLRB No. 25

D--9690
Staten Island, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FONTANA D'ORO FOODS, INC.

and

Case 29--CA--9846

PRODUCTION, MERCHANDISING AND DISTRIBUTION EMPLOYEES UNION, LOCAL 210, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on July 16, 1982, by Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Fontana D'Oro Foods, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on September 7, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent filed no answer to the complaint.

On September 15, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on November 19, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not thereafter file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint served on Respondent stated that, unless an answer was filed within 10 days from the service thereof, ''all of the allegations in the complaint shall be deemed to be admitted true and may be so found by the Board.'' As noted above,

Respondent has not filed any answer to the complaint, nor has it responded to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed admitted and found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a New York corporation with a place of business in the county of Richmond, in the city and State of New York, herein called the Staten Island place of business, where it is engaged in the wholesale distribution of food products and related goods and materials. During the past year, a representative period, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Staten Island place of business food products and other goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported and delivered to its place of business in interstate commerce directly from States of the United States other than the State in which it is located.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act,

and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All warehouse employees, including drivers and helpers, employed by the Employer at its Staten Island place of business, excluding all office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

2. The certification

On or about June 16, 1981, the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in the above-described unit and, at all times since that date, the Union continues to be the exclusive representative of all the employees in said unit for the purposes of collective bargaining.

B. The Request To Bargain and Respondent's Refusal

On or about September 30, 1981, the Regional Director issued a complaint and notice of hearing in Case 29--CA--9095 alleging, inter alia, that from on or about August 6, 1981, to August 14,

1981, Respondent refused to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the above-described unit.

On or about May 19, 1982, the Regional Director approved an informal settlement agreement between the parties in Case 29--CA--9095 wherein Respondent agreed, inter alia, that it would, upon request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative in the unit with respect to rates of pay, wages, and hours of employment, and, if an understanding is reached, would embody such understanding in a signed agreement, and that the Union's certification would extend from the date such negotiations began.

On or about May 27, 1982, the Union requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment, and other conditions of employment. Since on or about the foregoing date, Respondent has refused to bargain collectively with the Union.

Accordingly, we find that Respondent has since May 27, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Fontana D'Oro Foods, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All warehouse employees, including drivers and helpers, employed by the Employer at its Staten Island place of business, excluding all office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. Since June 16, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the appropriate unit for the purpose of collective-bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about May 27, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Fontana D'Oro Foods, Inc., Staten Island, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All warehouse employees, including drivers and helpers, employed by the Employer at its Staten Island place of business, excluding all office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Staten Island, New York, copies of the attached notice marked ''Appendix.''[1] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondnet to insure that said notices are not altered, defaced, or covered by any other material.

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[1] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. February 4, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect of rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All warehouse employees, including drivers and helpers, employed by the Employer at its Staten Island place of business, excluding all office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

FONTANA D'ORO FOODS, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--330--2862.